where they were accorded the treatment of Prisoners of War in full accordance with the Geneva Convention. It was a great and glorious victory and, I believe, one of the defining moments in the history of independent India. If we won our independence on 15th August, 1947, and became a Republic on 26th January, 1950, I do believe, we came of age as a nation after our historic victory in Bangladesh which was formalised on this day in 1971. It was a day whose full significance and impact on our march to nationhood is perhaps not yet fully understood or appreciated by our people. Perhaps that is why we do not mark and honour its importance in a formal and befitting manner perhaps on par with other festivals of our nationhood like the Independence Day and Republic Day. I urge upon the Government to take formal acknowledgement of the national importance of this occasion and institute it as a day of national importance to be honoured and observed in a befitting manner by our nation and by our people.

श्री सुरेश पचौरी (मध्य प्रदेश) **:** महोदया, मैं भी श्री शंकर राय चौधरी जी की बात का पूरा समर्थन करता हूं।

श्री एस.एस. अहलुवालिया : The hole house associates itself with the sentiments expressed by the home.Member It is a matter of pride for us.मैडम, आज का दिन हमारे लिए सिर्फ विजय दिवस ही नही बल्कि बांगलादेश के लोगो क आजाद बांगलादेश हासिल करने का भी दिन है। भारत ने एक बडी सहृदयता दिखाकर उनकी मदद की और फिर यह आजाद बांगलादेश बना।

THE DEPUTY CHAIRMAN: The whole House, including the Chair, associates itself with the sentiments expressed by the hon. Member. We are proud of our armed forces. The Government will examine whatever suggestions you have made. And we will all be with whatever the Government wants to do.

GOVERNMENT BILL

The Sick Industrial Companies (Special Provisions) Repeal Bill, 2003.

We will now take up the Sick Industrial Companies (Special Provisions) Repeal Bill, 2003.

THE MINISTER OF FINANCE (SHRI JASWANT SINGH): Madam, I beg to move:

> That the Bill to repeal the Sick Industrial Companies (Special Provisions) Act, 1985, as passed by Lok Sabha, be taken into consideration.

Madam, the Sick Industrial Companies (Special Provisions) Act, 1985 was enacted to tackle the problem of industrial sickness. The Act has not been effective in checking the problem either of industrial sickness or of finding timely solutions for restructuring corporate entities.

In view of the problems observed in the BIFR mechanism, the Sick Industrial Companies (Special Provisions) Bill, 2001 for the repeal of SICA, 1985 and the abolition of BIFR/Appellate Authority for Industrial & Financial Reconstruction was introduced in the Lok Sabha on 30^{m} August 2001.

Simultaneously, another Bill *viz.* the Companies (Amend) Bill, 2001 was introduced in this House to provide an alternative mechanism in lieu of BIFR/AAIFR with the main objective of facilitating and expediting revival/rehabilitation of sick companies and protection of workers' interests, and also, where necessary, winding up of companies.

The SICA Repeal Bill was referred to the Standing Committee on Finance for examination. The Committee's report to the Parliament, submitted on 19th December, 2002, reflected a broad consensus that BIFR set up under SICA had, to a large extent, failed to achieve its objective because of its inherent deficiencies. The Standing Committee on Finance recommended that the SICA might be repealed; and it also approved the SICA Repeal Bill, 2001. The Committee had made certain observations about pending cases abating on the repeal of SICA, saying that this had not been addressed in this Bill and the Committee had recommended that the Government should bring forward suitable amendments in the Bill itself to deal with such cases.

After considering the Standing Committee's report, the amendments in the SICA (SP) Repeal Bill, 2001 were proposed at the time of the consideration of the Bill in the Lok Sabha, to provide for (i) registration of abated cases by NCLT and removal of the limitations as to.

time; (ii) for saving the Rehabilitation schemes already approved by BIFR/AAIFR to be monitored by NCLT; and (iii) for waiver of fee in respect of abated cases when they register afresh with NCLT.

I commend, therefore, Madam, that SICA (Special Provisions) Repeal Bill as passed by the Lok Sabha on th December, 2003 be taken up for consideration and passed.

The question was proposed.

SHRI SANTOSH BAGRODIA (Rajasthan): Madam, this Bill, which was introduced in the Lok Sabha on 30th August, 2001, is a repeal Bill. Many Bills are being repealed; so, it sounds as if this is a very simple Bill. But, Madam, it is not that simple. It is much more complicated. That is what we see on the face of it. Now, this Bill was brought forward in 1985. As the hon. Minister himself mentioned the purpose of bringing forward this Bill is this. Because many units, both in the public and private sector, were getting sick, and there was the question of how to rehabilitate them and how to improve their working, and that kind of advice could have come from the BIFR. I will not go into too many details, but I would like to give some facts for the information of the Members as to what the BIFR has done all these years, *i.e.,* from 1985 till now. In the year 1987, the first year when it started functioning, the number of cases registered, in one year, was 311. In 1988, 298; in 1989, 202; in 1990, 151 and like that. In the year 1996, this figure came down to 97. From 1997, after the so-called globalisation and the effect of new economic order, the sickness of industrial units started increasing. From 1997 onwards, each year, it went on increasing. The number of cases registered in 1997 was 233; in 1998, 370; in 1999, 413; in 2000, 429; in 2001, 463; in 2002, 559 and till October of 2003, they registered 377 cases. Madam, all these years, the total number of cases which the BIFR has registered was 4695. Out of these 4695, 25 per cent cases were just dismissed as they were not suitable and they were not worth even discussing. So, the number of such units was 1258. But, out of remaining 3437 units, 13 per cent units were revived. The number of cases under revival was eight per cent, *i.e.,* 257. The number of winding up units was 1208, *i.e.,* 30 per cent and the number of pending cases was 22 per cent.

Madam, what I want to impress upon the hon. Minister is -- I don't think it is correct to say that the BIFR has not done any good work -- that the BIFR has done quite a lot of good work and the units which have been

referred to the BIFR were just unmendable. Working in a democratic system, I should say that they have worked very hard to revive these units. It is not correct to say that they have not done anything as so many cases are pending for many years. If you go into the details, you will find that it is not the BIFR, but the system itself which is responsible for all this. For example, in many cases, either the High Court or the Supreme Court comes in their way. If the High Court says something, then it is above the BIFR. The BIFR is not the supreme authority. Another thing is, there was a provision for four Benches. All these years, there were never four Benches. If you have less people working for the organisation, obviously, you cannot meet the target. Let us not think that this new Bill and the repeal Bill is not necessarily only for the improvement of the situation, I know there are many factors as to why this Bill has been brought forward.

Madam, I would also like to mention here that out of these, the number of private companies was 4496. The number of public sector companies which have gone to the BIFR was 83, and the number of State public sector companies was 116. So, what we see is, different types of companies have gone to the BIFR. Madam, before I go into the details as to why this situation arose and these units of public sector and private sector become sick, I would like to mention what the Report of the Standing Committee has said. The hon. Minister himself has mentioned that this Bill was sent to the Standing Committee. As we know, in the Standing Committee, there are Members belonging to the various political parties. The Members of the Standing Committee spent hours and hours in discussing the Bill in greater detail. The Standing Committee said, "Strangely enough, the SICA has been repealed in the alternative proposal of the Company Law (Second Amendment), even before the Standing Committee on Finance has considered the SICA repeal, and has expressed its views on the proposal." Even before the Standing Committee has considered or discussed, it has been repealed in another Amendment. I don't think it was very fair on the part of the Government to repeal this, that too, even before it has been discussed in the Standing Committee.

The whole thing was made very obvious. The hon. Minister also has mentioned that some recommendations have come from the Standing Committee. The Bill was presented in 2001. The report was there in December, 2002, and we had one full year before it came to Lok Sabha for discussion, probably last week and only now in Rajya Sabha. The

Government decided not to accept even a single recommendation whatsoever for any kind of amendment. I would like to underline "not to accept." If those amendments are good, then we don't want simple assurance, we want proper amendments so that the purpose of spending hours and hours by the Standing Committee is fulfilled.

Madam, when we talk on units going sick from 1996 onwards, let me say a few things. When a private sector company goes sick, politically we say that the management is responsible for it. But is it really only the management that is responsible for it? I think, the company goes sick for various reasons. One of the important reasons is the change of Government policies from time to time-discontinuity of a policy. There would be one policy this year, and in another six months, that policy changes. Next year, again, some other policy comes. I have given figures. From 1997 onwards, drastic changes have taken place in policies. What can anybody do? If you see the records, most of the units that have gone sick are labour-oriented. I will give small examples, one or two.

What happened to the sugar industry when we started importing sugar when we had surplus sugar in the country? The entire sugar industry went sick. Since then, we are not able to recover. What is happening to the labour-oriented tea industry today? We started importing tea when we are not able to export enough tea outside. These are the things which are happening.

The worst affected are the labourers. What do you do about it? The steel industry, at one time, for many years, I think, 8 or 9 years, had continued to be sick. That is another labour-oriented industry. The high-tech industries don't go sick that much. In the end, it is the workers who suffer the most.

When I come to the public sector, Madam, you know that it is simple accountability and less productivity. The most important reason which recently we have been seeing is--even the CVC has observed about it-interference from the Ministers in the PSUs. I don't know which Ministers are doing it now, maybe, earlier; but, at least now, the CVC himself says about it. Then how do you blame the PSU managements only? There are PSUs which are Navaratnas. There are other PSUs which don't function. They have gone sick because of interference from the political masters.

Madam, now if you go into the GDP growth, I think, the present Government is very happy that the GDP growth is very good. They say it is 8 per cent or something like that. But out of this 8 per cent, Madam, the maximum GDP is because of extra agricultural production. That is God's gift. Due to good weather and good monsoon, we got extra production. *...(Interruptions)...* Do you have any objection to this God's gift? Is there any real GDP growth in production? Is there any real growth in production? How many lakhs of SSI units have closed down completely? How many new units in the country have come up during the last five or six years? If all these things are there, then we can say that there has been growth in production. How many new units have come up or how many old units have expanded? If you go by record, I can say with authority that the growth has been minimal. Then where is the growth? Madam, it is for this reason I would request the hon. Minister to amend this. You have in your opening remarks mentioned Lok Sabha. I do not want to mention what assurances you have given there. Please just do not give assurances. I will specifically mention sub-clause 2 of the existing clause 1. I want this to be amended because it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. For this purpose, I want to add that different dates may be appointed for coming into force of different provisions of this Bill. If suddenly this Bill is passed, then it becomes a law. What will happen to all the industries? The hon. Minister mentioned about abating. He has only mentioned about those industries for which schemes have been approved. How about those industries, which were, registered this year or last year? How about those industries for which the entrepreneurs either through the banks or directly have paid lakhs of rupees for making fresh proposals? What will happen to those interim benefits which are being given to the workers? What will happen to those units which are giving interim benefits to the banks and the Governments? What will happen to those set-ups where part decisions have already been taken? Everything will become topsy-turvy. At least, I know this because many people have come to me. They just do not know what is going td" happen. The hon. Minister has mentioned that they can make a fresh application. The BIFR is a Government set-up. You are putting up a new set-up. Why not the whole thing be transferred? In place of FERA when we brought FEMA, we had a sunset clause. Why not have a sunset clause here for the units which are already registered at a particular point of time saying that they will still be looked after by the BIFR? The other units should automatically go to the new set-up, the Tribunal. The

Tribunal can start its work on 'as is where is' basis so that the work already done is not started again. Otherwise how many hours will be further wasted and how many more efforts will be further wasted? How much more time will it take? Maybe, some unit is pending for the last ten years. Nothing has happened for the last ten years. All right. It was wrong. But, it might take another five years! And whatever effort has been made in the last ten years will go waste. Is it fair towards the workers? Is it fair towards the entrepreneurs? So, I request the hon. Minister to consider substitution of Clause 3 of the Sick Industrial Companies (Special Provisions) Repeal Bill with the following clause. "The Sick Industrial Companies (Special Provisions) Act, 1985, (hereinafter referred to as the repealed enactment) is hereby repealed and following such repeal, all cases pending before the BIFR, at any stage, prior to the declaration of a company as sick, under the provisions of Sub-section 1 of Section 15 of the Repeal Enactment, shall abate.

I come to the next provision. This should become Clause 3 Sub-clause 2. It is, "Notwithstanding such repeal, all cases pending with the BIFR, at any stage, subsequent to the declaration of sickness of a company under Sub-section (1) of Section 15 of the repealed enactment, or, as the case may be, with the AAIFR shall be continued to be dealt with and disposed off by the Tribunals under the provisions of the repealed enactment, as if the SICA Repealed Act, 2001 (hereinafter called as Repealing Act) has never been passed." This is what has happened in the case of the FERA, which, I am sure, the hon. Minister knows better than me. For the aforesaid purpose, the two Tribunals shall continue to exercise all powers, perform all functions and their members, staff, supporting office and infrastructure shall continue for a period of, at least, two years from the date of coming into force of the Repealing Act or for such period as the Government may, by notification, fix in this behalf.

Now, I come to number three. On the similar basis, "No fresh reference, with respect to a sick company, shall be made to the BIFR after the Repealing Act, 2001, comes into force." Madam, what is the recommendation of the Standing Committee on Finance? What is the comment of the Standing Committee on Finance? The Standing Committee on Finance looked into this very elaborately and made its recommendations. I wish to read one of the recommendations of the Committee. It says, "The Committee is deeply concerned to note that the issue of pending cases with

the BIFR/AAIFR, which shall abate on repeal of SICA, has not been addressed in the above mentioned Bill. They find that the transfers, through provisions, are conspicuous by their absence in the proposed NCLT set up. This, the Committee feel, will cause a great hardship to the sick companies whose cases are pending before the BIFR/AAIFR and they are of the opinion, that a lot of time will be wasted in registering the said abated cases afresh with NCLT. Hence, the Committee recommends that the Government should bring a suitable amendment in the present Bill itself to deal with abated cases." The Committee says that a lot of time will be wasted in registering the said cases. And what will happen during this interim period till a fresh registration is applied or till a fresh registration is made? As you are aware, this registration, in the case of the BIFR, is 100 per cent wiping out of the capital. Here, it is 50 per cent. So, there is no reason why any case, which is already registered with the BIFR, is not suitable for NCLT.

THE DEPUTY CHAIRMAN: Mr. Bagrodia, your party has got two speakers. So, you divide your time accordingly.

SHRI SANTOSH BAGRODIA: Then, Madam, I speak when I move my amendments. For the time being, I will try to conclude. Madam, could you tell me how much time left for my party?

THE DEPUTY CHAIRMAN: You have started at 1407 hours. You have already spoken for twenty minutes and Mr. Goenka is also there to speak from your party.

SHRI SANTOSH BAGRODIA: Okay, Madam, I would just try to finish it. Another very important question, which arises here, is that clause 4 of the Repeal Bill shall be re-numbered, as sub-clause 1 thereof, and at the end of the said sub-clause, the following provision shall be inserted: "On the dissolution of the BIFR and the AIFR, the Government has made all efforts to absorb the officers and employees, holding regular appointments in these organizations, against suitable positions in the National Company Law Tribunal, and its Appellate Tribunal, which had been created under the Companies Second Amendment Act, 2002." In brief, there is a very small number of regular employees - 50 or 60. Others are not regular employees in the BIFR. For whatever wisdom the Government has decided, why should these workers be made to suffer; why should these employees be

made to suffer? Why should we not make a law in this regard? Why should they not be absorbed in the NCLT? They have got a vast experience of working in such units. So, I would like to request that this should be done under the law with the conviction that this is a necessity. Madam, I appeal to the hon. Minister, through you, once more, let us not go only for assurances. Or, if you give an assurance on the floor of the House that these amendments will be brought in the next session, I don't mind. But let us not leave it to making the rules; let us not leave it only to the bureaucratic set up to do it. If it would not be done, there would be so many problems for everybody involved in this kind of set up, which, I think, the Government is not able to visualise. With these words, I thank you very much for giving me this opportunity.

SHRI C. RAMACHANDRAIAH (Andhra Pradesh): Thank you, Madam Deputy Chairman, for giving me this opportunity to speak on the Sick Industrial Companies (Special Provisions) Repeal Bill, 2003. This is, indeed, a welcome Bill. There is not much to be debated on this. This should have been brought long time back because nobody was confident that the BIFR -- when it had been constituted, the way it had been constituted, and the powers that had been conferred on it -- would be able to deliver the goods. Though it had been constituted some 15 years back, but it was never fully constituted. And, on certain occasions, I had to make a comment that the Board of Industrial Finance for Reconstruction itself required reconstruction. That was the state of affairs. There had been umpteen cases where the units, which had been referred to the BIFR, had become sicker because of the inordinate delay in disposing of the issues. I welcome this Bill because the performance of these institutions was tardy and very inefficient, and the Government was also not serious about strengthening this institution. So, I would like to request the Government to be serious because the sickness in the industry is the greatest menace, -affecting the economy of our country. A lot of installed capacity of the industries is still unutilised because of the sickness. If we analyse the reasons as to why the industries have become sick, there are certain very, very small reasons, say, lack of raw material, lack of adequate banking facilities at appropriate time, lack of marketing facilities. After globalisation, there is a danger of more industries becoming sick, unless they fulfil certain conditions. That means, their products should become more competitive at the international level. And for this they have to improve their productivity rate and they have to improve the quality of the product so that they can

compete with the international products. These are the aspects which have to be taken into consideration. Once a unit becomes sick, it is being referred to the BIFR. Now, it will be referred to this Tribunal, which is going to be constituted as per this Bill. I am very happy that this Tribunal will dispense with the multiplicity of fora to decide on matters of mergers, amalgamations, etc. This development, which is forthcoming, is very good.

I want to make a suggestion to the Government. The NCLT will be under the control of the Company Law Board. Will this NCLT be under the Ministry of Finance or the under the Company Law Board?

AN. HONOURABLE MEMBER: Yes.

SHRI C. RAMACHANDRAIAH : That is the weakest Regulator in this country. The Company Law Board is the weakest Regulator in this country. Umpteen irregularities have been committed, but they were never checked, never punished. That was the root cause for the scams in the share market also. It is known that the auditors have erred, the management have erred, and it has gone to the notice of the Company Law Board also. But, the existing provisions of punishment are less stringent, so, they have not taken any action. There are umpteen cases, but I don't want to narrate them at this stage. I request the Minister that more teeth should be provided to this Tribunal so that they can deal with such problems effectively.

I want to give one more suggestion. If there is an erosion of 50 per cent of the net worth, that can also be referred to this. That was the implication that I could infer. It is very good. But what is the definition of the net worth? Net worth can be easily manipulated if one is not very specific about the net worth and the management control. Now that the proposal is being referred to this Tribunal, they should come out with a package. Ultimately, who is responsible for the sickness of the industry? In most cases, the promoters are responsible. It is the promoters who are responsible for this. The units are becoming sick due to the siphoning off of the funds or the diversion of funds. And, as far as the other reasons like, marketing facilities, lack of material resources are concerned, the Government can take care of them. But when promoters themselves indulge in making the unit sick, then, stringent provisions have to be made. They should come forward to the Tribunal with a package for revival so that

it can be considered very effectively.

One more suggestion, which I wanted to make, is this. If ten Benches are not sufficient, my request is kindly increase the number of Benches so that the cases can be disposed of as early as possible. Once a unit is declared as a sick unit, it should not remain sick for long. Either it should be liquidated or it should be revived. The more the delay, the more the sickness and a sick unit cannot be revived at a subsequent time even if the Tribunal were to give an award for its revival. There are a number of other BIFR orders which were not implemented. In my area alone, there is a one very big paper mill by the name Rayalaseema Paper Mill, which has been taken over by the first generation entrepreneur with the sole intention of coming to the rescue of the workers working in that industry. Having spent Rs. 60 crores, the bankers could not provide working capital, and more than 38 persons have committed suicides. And, till today, that unit is sick. In spite of the direction of the BIFR, the bankers could not provide the working capital. So, they have prepared an appeal, which is in the preliminary stages. Unless you provide more teeth to the Tribunal, which is going to be constituted, I don't think, the purpose will be served. For example, take the case of the IDPL, the Indian Drugs and Pharmaceutical Limited. The hon. Minister is here. We made a number of representations to this effect.

And it is a pioneer industry in the field of drugs and pharmaceuticals in this country which has produced so many entrepreneurs like N.G. Reddy, Reddy Labs. So many big industrialists in pharmaceuticals have come up, but, till today, we have not been able to revive it. Even the most possible reasons which we extend to the Government have not been taken up. Sir, the Government's requirements in respect of pharmaceuticals can be fulfilled by that unit. Even then, it has not been considered. So, the Government should be very serious. I welcome the process of disinvestments that is being done, but, either you should do it quickly, or, you should provide all these industries with some budgetary support. No production is taking place. Every year, about Rs.100-150 crores, you have to spend to provide budgetary support to these units. This is merely a waste of public money. So, my request is either o revive it or disinvest it immediately so that public money can be saved. One more point I would like to make is this. After these units become sick, one aspect is we have to see how to revive it; how to do this? But you should ascertain what are

the reasons for these units becoming sick. As I told you, most of the capital of the banks is in these industries. And, once upon a time, though small-scale industries in this country used to comprise a major chunk of the exports, nowadays, they are not competitive with the international market. They need to upgrade their technologies so that their products become more competitive in respect of cost and quality. Sir, the inputs or the cost of production, except labour, is abnormally high in this country. But when we go in for large-scale production and automation, the component of labour cost becomes irrelevant. It is high time the Government pondered over this.

Sir, we are in a transitional stage. We have taken a decision for globalisation, or privatisation. My apprehension is, most of the industries are becoming sick because the Government has not provided sufficient time or cushion to enable them to be more competitive, as per the international standards. In this process, there are going to be more NPAs also. Sir, this aspect has to be taken into consideration. Sir, I welcome this Bill. With whatever experiences you have gained in the BIFR, kindly make this Tribunal more effective. Thank you.

DR. L.M. SINGHVI (Rajasthan): Madam, the Bill deserves to be welcomed and I am happy that the House has been able to find time to discuss this Bill which has been pending for nearly two years. The sick undertakings have become more sick, but, I think the diagnosis on the basis of which this Bill was brought is for everyone to endorse and to understand. Sickness, Madam, is not always because of the people who run the business; is also because of them because some of them are too selfish and have been found to enrich themselves at the cost of the unit itself. On the other hand, sickness has been caused partly because of the inept way in which the banks have handled many of these undertakings. It is of the greatest importance for us to put in place an alternative mechanism as provided, that the National Company Law Tribunal will now be vested with the authority to deal with this phenomenon of sickness. I do hope that they are able to cope with it. The past record shows that the National Company Law Tribunal or the Company Law Tribunal which was existing before, was also clogged and congested. It is also important to bear in mind that the litigious approach will not do; one has to adopt a problem-solving approach and that is why this diagnosis should commend itself to the House. The slow pace of BIFR intervention has become notorious, and, I think, it is

partly because of that that the problem of sickness was not really tackled with economically but remained in the corridors of litigious approach to the problem.

It is also correct that there was little monitoring of sanctioned revival schemes, and there were also delay in winding up schemes. But, Madam, I think, what the hon. Member, Mr. Santosh Bagrodia, has raised by way of an amendment and in the course of his speech ought to commend itself to the Government for their consideration. It is not the fault of those who were before the Tribunal or the Appellate Authority under the SICA of 1985. They have been waiting for some solution to emerge, and if time and resources have been invested in that process and effort should be made to see that they are brought to a conclusion, I have a feeling that Mr. Bagrodia's own amendment may not achieve the purpose he has in mind because he does allow for abatement in the first place and then provides by a non-obstante clause, not standing the repeal, they will be dealt with. A way can be found by the Government to make sure that those proceedings to which he refers to in clauses two and three by way of his amendments are protected and those which are already undergoing these hearings and trying to find a solution do not have to start *de novo.* But if they are asked to start *de novo,* all that time would have been wasted, and, in fact, a lot of time has been wasted both before the Board and the Appellate Authority. This institution will go, in my respectful submission, unlamented and unsung because it took too long to deal with problems of sickness, the sickness which was before them got more sick, and, I think, it is important that the Government is now taking up this issue in a way in which, I hope, the problem of sickness will be expeditiously dealt with. It is possible that the National Company Law Board may also find the problem of litigiousness of long and protracted and agonising procedures, but I think, when all is said and done, the point made by Mr. Santosh Bagrodia about those pending proceedings particularly after an undertaking has been declared as a sick undertaking ought somehow to be rescued in terms of saving the time for solving their problems. The banks and the other players in the system should also be encouraged to sustain units and to make them functional and flourish rather than to apply this squeeze, the only thing that they have known in the past.

I congratulate the hon. Finance Minister for the brighter prospects for our economy. I also congratulate him for having brought this Bill to deal

with the problem of sickness in a more effective, in a more expeditious and in a more purposeful manner. Thank you, Madam.

SHRI DIPANKAR MUKHERJEE (West Bengal): Madam, I wish I could have also congratulated the Finance Minister, but, I am sorry, I would not be able to do so. Madam, I am afraid certain points which I am going to raise here would be repetition of what has been said from our side during the discussion on the National Company Law Tribunal Bill which was passed by this House. But I am constrained to point out one point. We are not discussing here the winding up of the BIFR. What we are discussing is the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001, a Bill to repeal the Sick Industrial Companies (Special Provisions) Act, 1985. I am sure the whole House should again ponder over the objectives of that Bill because the objectives have changed so far as this Bill is concerned, the National Law Tribunal Bill. Its objective was that the sickness, for the first time, in this country was, at least, identified not as a credit and debit and the restructuring part, but, that the industrial sickness has its own social and economic implications. That was understood when this Bill was framed. But, somehow or the other, the objectives of that Bill as a social and economic implications have been changed. If you compare the report of the Justice Eradi Committee with this Bill, I can say that the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001 is not for expeditious revival of sick units.

It is for expeditious closure of sick units. Now, the objective of the earlier Bill, if I remember the words correctly, the main objective, was the utilization of the capital assets, the productive assets. And somehow, Madam, the country is forgetting the productive assets. Ours may be a voice in wilderness, but we will go on, as Mr. Jibon Roy had done in the morning.

Now, the productive assets include the capital, material and labour. Our perception is, the thinking that is prevalent now is, the protection of the capital, and labour is not on the agenda. When I say 'labour', it does not mean the sacking of some people or winding up of companies. The social implications have to be foreseen in those places where sickness has been there. Industrial sickness is on the rise. Can anyone deny that?

Now, as Dr. Singhvi was saying -- and it is also a fact -- if one goes through the RBI figures, one will find that most of the closures and sickness were caused by policies, by the promoters, and first three per by

industrial sickness. But what is being stressed today is that it is the labour, it is the labour and it is the labour, more labour and labour productivity! But facts do not state that!

THE MINISTER OF STATE OF THE MINISTRY OF AGRO AND RURAL INDUSTRIES (SHRI SANGH PRIYA GAUTAM) : That is what Shri Bagrodia was also stating.

SHRI DIPANKAR MUKHERJEE : No, Sir, I am not talking about that issue.

SHRI SANGH PRIYA GAUTAM : Labour-oriented units are falling sick.

SHRI DIPANKAR MUKHERJEE : I am not talking about that. If you so wish, you can go there and see for yourself. What I am saying is, this is the philosophy. The philosophy behind the repeal of SICA is not to improve the working of the AAIFR cases. So far as BIFR cases are concerned, it is the same thing again. BIFR did not have any mandatory power to revive an industry. It had the mandatory power to wind up an industry! BIFR's weakness was that, time is the essence of revival, but that was not taken into consideration. Section 22 was defective; everyone has been talking about that for years together. So, the objectives were there, but they were not implemented.

Today, the repeal by this Bill cannot and will not cause any improvement, because sickness is on the increase. The Government cannot come and say that with the liquidation of BIFR, the NCLT will be on a binge to reduce the sickness. I don't think anyone can say what exactly is being achieved, as the National Company Law Tribunals will have the same problems as BIFR had. It will be the same. So many cases will be there. Already so many figures have been given in this context and I don't want to repeat those figures. The question is not only that. The question would be the expeditious closure of the units through this, because they would have more legal powers.

So, the fact remains that the basic reasons for sickness, the diagnosis of sickness, are not being addressed. The basic problem is that in implementing any measure by revival of units, time is the essence, and that

objective, that essence, that urgency is not there. The urgency is probably to save some capital, the creditors' units.

If you go through the Statement of Objects and Reasons, the first paragraph, a, b, c, d, e & f, deals with delays in winding up of sick units. Yes, delays in winding up of sick companies. That is the major objective for the repealing of the earlier Act, and bringing up the National Company Law Tribunal. It never addresses the delays in revival of units. So, revival is not the agenda 'but closure or winding up is the agenda. If that is the case, so far as this Bill is concerned, after the National Company Law Tribunal comes into force, BIFR becomes redundant. Still, coming to the philosophical change so far as the Government is concerned, I have to again remind them, at least think about the social implications of expeditious closure of these units. The social implications, the economic implications, the political fall-out, everything, will have to be taken into consideration.

Madam, the last point which I want to stress upon is, what has been told from his own point of view, regarding the procedures that BIFR and AAIFR would follow. Let the Government be clear, because if time is the essence, the question of registering the cases --which include old cases also— would mean that we have already got the obituaries written and we just want to repeal certain procedural matters, legal matters. We are not interested in that. The fact is that if the cases pending in the BIFR have to be registered again, that means you have written the obituaries for all these units already!

My second point is if the Government has even five per cent interest in the revival of industries, I would like to know what exactly is the guideline from the Government regarding the sanctioned schemes for the sick units. Unfortunately, in our State, we have a few units where the revival schemes have already been sanctioned.

Now this non-implementation of the sanctioned scheme has also been the reason for closure of various units. That being the case, how the new agency is going to take up them? What type of assurance the Government can give that, at least, this sanctioned revival scheme would not suffer because of the changeover from this BIFR to National Company Law Tribunal? So far as the cases which are pending with the Draft Revival Scheme are concerned, we can talk of three cases. The first is sanctioned

scheme. How many sanctioned schemes is BIFR right now monitoring? What will happen to them? Second, whether the Draft Revival Scheme has already been prepared with BIFR and what is going to be the procedure? Third, if the cases are registered, taking the time into consideration, is the Government at all keen on giving any sort of guidelines to the National Company Law Tribunal? Madam, I know the requirement. No-holds-bar, now it is very clear. I know that it is in the interest of the capital. The Government has to act now. I can only say, it does not serve the interest of the labour. I do not say labour means only the labour, workers, the managers and the engineers. I know some of the units where engineers are also managers. They have nothing to do with policy. The policy which we are adopting now, with this economic policy, the sickness is bound to increase. If the Government is serious about the sickness, then this is not the way. I can only indicate one particular example. I have seen one draft or Act in Gujarat where the State Government is interfering by making a Board for addressing the problem of sick and small-sector industries, whereas the BIFR deals with big and medium-scale industries. If sickness is a social problem, this is not the answer to it. If sickness is an economic problem, this is not the answer to it. If sickness revival is a part of utilisation of the capital assets, and if you treat, apart from capital and men, market policies also as part of that, this is not a solutton. This is not going to solve anything. Thank you.

श्री आर0पी0 गोयनका (राजस्थान) : उपसभापति महोदया, कई विद्वान, पंडित सदस्यों ने इस रिपीलिंग आफ बी0आई0एफ0आर0 बिल के बारे में जो अपने विचार रखे हैं, मैं उनसे पूर्णतया सहमत नही हूं। मैं तो समझता हूँ कि यह एक पोजिटिव स्टेप है, लेकिन यह जरूर है कि इस अमेंडमेंट में दो एक खामियां मुझे समझ में आई है, जो मैं आपके माध्यम से माननीय सदन के सामने , मंत्री जी के सामने रखना चाहता हूं । पहली चीज तो आपको यह समझना है कि वास्तविक उद्देश्य क्या है ? सिकनेस कैसे कम हो या जो सिक कंपनी हो गई है उसको कैसे ठीक किया जा सकता है? यह जब तक बी0आई0एफ0आर0 था तो कंपनियों के जूते घिस जाते थे, लेकिन उनका डिसीजन नही आता था । जैसा बागड़ोदिया जी ने कहा, जो मामले पहले रजिस्टर्ड हो गए हैं उनको इसमें किसी तरह से ले लिया जाए, यह एक अच्छा सुझाव है । दूसरा मेरा सुझाव यह है कि अगर सिकनेस को कम करना है, सिक कंपनी को रिवाइव करना है तो डिमर्जर से, जो सिक कंपनी है अगर वह प्रोफिटेबल कंपनी में मर्ज हो जाती है तो खुद-ब-खुद आप देखेंगे कि कंपनीज वापस चालू हो गई हैं वरना फिर से नए एंटरप्रिनुअर्स आएं, वे पब्लिक सैक्टर के हों, प्राइवेट सैक्टर के हों या किसी सैक्टर के हों उनके वश का नही है कि उनको ठीक कर सकें ।

3.00 p.m.

मैं बहुत छोटे से सुझाव दे रहा हूं । मंत्री जी, मेरे दो सुझाव है – एक, जो बी0आई0एफ0आर0 या सिक इंडस्ट्रियल एंड फाइनेंस रिकंस्ट्रक्शन बैंक है, इनमें जो केसिस आप डिमर्जर अलाऊ करें । सिक कम्पनियों को एक प्रॉफिटेबल कम्पनी में मर्ज करने दिया जाए , इससे आपका उद्देश्य पूर्ण हो जाएगा । बाकी पंडित लोगों ने तो यहां क्लाज़ ए, क्लाज़ बी, क्लाज़ सी, क्लाज़ डी, सबके बारे में कहा है और यह तो मेरी अपनी ही समझ में नही आया , मैं आपको क्या समझाऊंगा । …(**व्यवधान**)…

श्री संघ प्रिय गौतम : कांग्रेस को भी मर्ज हो जाना चाहिए, सिक हो रही है ।

श्री आर0पी0 गोयनका : मैडम, सवाल यह उठता है कि सिक कांग्रेस हो रही है या सत्ता पक्ष हो रहा है और इस पर एक डिस्कशन हो जाए तो हम आपको दिखा देंगे कि कौन सिक हो रहा है । …(**व्यवधान**)…

THE DEPUTY CHAIRMAN: Right now, we are having a discussion over the sick industries. So, let's stick to industries, not politics. Now, Shri Virumbiji. Mr. Virumbi, you still have to speak.

SHRI S. VIDUTHALAI VIRUMBI (Tamil Nadu): Sorry, Madam, I did not notice. Madam, the Bill brought before us for consideration, that is, the Sick Industrial Companies (Special Provisions) Repeal Bill, 2003, is only to replace another institution called the National Company Law Board. Madam, they have mentioned about some lacunae from (a) to (f) in the Statement of Objects and Reasons. These reasons have not actually been carved out from the experience of the Ministry. The reasons attributed in the Statement of Objects and Reasons are exactly taken from the 33rd Report of the Standing Committee. If we compare the Standing Committee's 33rd Report of 2nd December, with the Statement of Objects Reasons, we find that sentence-by-sentence, word-by-word, they are same. It has been actually taken from there. I don't say that it is a mistake. I quote from the 33rd Report, "After having mentioned all these deficiencies in 1997, the Government brought forward a Bill, namely, the Sick Industrial Companies (Special Provisions) Repeal Bill, 1997, which sought to repeal the Act of 1985, besides strengthening the mechanism of BIFR by making certain far-reaching improvements in the existing law. In a nutshell, the Bill addressed almost all the deficiencies." That is very important, "...the Bill addressed almost all the deficiencies noticed in the working of the SICA, but the Bill lapsed on the dissolution of Lok Sabha."

This is in the Report of the Standing Committee. Therefore, to offset, to come *over* the deficiencies mentioned in the Statement of Objects and Reasons, already a Bill was introduced in the Lok Sabha, but that particular Bill lapsed because of the dissolution of the Lok Sabha. Therefore, I would like to know whether the Bill, which has been brought before us for consideration, is an improved version of the Bill which was actually placed before the other House, and, which, unfortunately, lapsed because of the dissolution of the House. This is the particular question, which I would like to know.

Secondly, Madam, upto 30th June, 2002, the references that have been received are 5,181 in the private sector and 268 in the public sector. I do not want to go into the statistical jugglery. I would like to say that practically some of the units are closed down not because of the problems related with the labourers, but most of them are closed down due to the wrong and uncompetitive policies.

I give you the example of the Salem Steel Plant. Due to the wrong production policy of the executives, the Salem Steel Plant started incurring losses. Second is the way in which they wanted to get loan. It is also one among the units of SAIL, and when the same SAIL has given funds from its own resources to some other units, why has it incited the Salem Steel Plant to get the loan from the scheduled commercial banks? For some other units, SAIL is giving the required amount from their own resources, and, if the same SAIL is giving directions to the Salem Steel Plant to avail of the loan from the commercial banks, it means such type of wrong policies lead to losses. Even if the Government gives some sort of moratorium on interest, automatically, the Salem Steel Plant could become economically viable. So, this is only due to the wrong policies.

Now, the BIFR as well as another Appellate Authority for Industrial and Financial Reconstruction are also going to be closed, we would like to know whether the required rules have already been framed. Why I am asking that is to know about the fate of the abated cases that is left with the BIFR.

Madam, the hon. Minister knows our past experiences on that. I would like to give an example of unclaimed dividend. Suppose, if the dividend of a company is unclaimed constantly for seven years, it has to be

invested in a separate fund, the Investors' fund. This is the Act passed. But, after having enacted the Act, it took nearly three years to frame the rules for that. Why did you take three years to frame the rules? The corporate sector in India is so powerful -- that is the only reply we can have. We know our people are very intelligent, they know the law; they are capable of framing the rules within a fortnight, in spite of it, why it took three years for you to frame the rules, to see that the unclaimed dividend is actually deposited in a separate fund. We want to know whether the rules required to operate the Company Law have been framed or not. In case, it is not, how and when is it going to be completed? Then, I want two things. Number one, I want to know how we are going to revive the industry. What is the procedure? How are we going to revive the industry? Simply closing is different. Whether the Government would come forward to revive the industry that is actually suffering. Number two, the companies closed, once they are referred to the BIFR, so far there was no assurance for the labourers to get salaries and other things. The workers have been suffering. The people those who are actually working from the dawn to dusk on dried husk in the workshops, all of a sudden, one day it is closed, means they are unable to get the basic needs. Therefore, what is the guarantee from the Government to feed the people those who are suffering for want of the basic rights? Therefore, one, the Government should ensure that the salaries are given, even though it is referred to the National Company Law Tribunal. Two, to revive the industry, the Government should come forward. In which way the Government will come forward, that, we are expecting, we will be enlightened by the hon. Minister. With these words, I feel that it can be decided only after two or three years how this is going to work. The success or failure cannot be decided now. Therefore, I wait for two or three years to see how it is going to work in the place of BIFR. With these words, I conclude. Thank you, Madam.

THE DEPUTY CHAIRMAN: Mr. Thakur, you only got two minutes. Your party has three minutes.

SHRI EKANATH K. THAKUR (Maharashtra): It's okay, Madam. Thank you, Madam, for this opportunity. I would not take more than three minutes. Madam, the objectives for which this very, very essential Bill has been brought, have been spelt out in the Statement of Object and Reasons from (a) to (f) and I join the House in supporting the Bill. The reasons set out there are unexceptionable and with BIFR as a system has done more

harm than good to the economy of India; that is my personal opinion. Madam, while speaking on this Bill, I feel that after globalisation, a particular view is gaining ground in this country about mortality of industries. And, from this House, we have to caution those in Government and other policymakers about that thing. In the United States of America, in the personnel sector, the rate of mortality is considered to be around 40 per cent. The whole Western philosophy is now being adopted here and we are taking a policy stance where we say those who are about to die, let them die. Even industrial euthanasia is being recommended. Now, we have, as a nation, to take a view whether we can allow to have the same values of industrial development that the Western countries have had. In this context, I would first like to thank the hon. Finance Minister for some of his recent moves after he took over the Office as Finance Minister in reviving some of the sick units. The CDR mechanism that was introduced at IDBI and some of the packages that were given, that brought back to life some of the steel industries and a few other industries are welcome steps, because the units which are languishing after several crores of rupees being invested, several crores of public money being invested there, are national assets. And, this Government must look at them as national assets. If necessary, remove the ownership, remove the management, and put a new management. But, those assets must be made productive once again and the rights of the workers and the interests of the workers must at all times be protected. Now, this philosophy of reviving a few industries has benefited the steel industry. Many other units are also being revived and this should be taken further as a movement. It is also necessary to pay attention to role of banks. The six Clauses which have been mentioned here, (a) to (f), do not mention the role that was played by the banks. Some of the banks have played various roles and they have ensured that the units die because certain personal interests of certain bankers were not taken care of. Madam, I come from the backward region from Sindhudurga district of Maharashtra and we had a very big unit called Wyman Garden. I do not want to name the bank, but that bank's Chairman want somebody to be appointed as a Managing Director, but he was not appointed. So, he made that unit to die and he ensured the death of that unit. And this has happened in many cases. Therefore, there has to be greater emphasis on the role that banks play, and if banks purposefully starve the industry of finance, care must be taken to ensure that it does not happen. Madam, the NCLT mechanism is stili not known to us fully, whether it takes care of all the elements from 1 (a) to (f), mentioned in the objects of the Bill and

other unmentioned anxieties in this regard, is not known. So, we are in a situation where the old world is dead and the new is yet to be bom or powerless to be born, and we will be able to express ourselves fully only when the NCLT mechanism is fully presented to us. Before I conclude, Madam, I would like to say one more thing. Four years ago, in the Budget, a new concept of promotion of corporatisation was introduced and proprietorships, partnerships, small industries were allowed to be corporatised without having to pay capital gains tax after proprietorship and partnership were converted into companies. Madam, this corporatisation movement has to be given impetus in this country, because without the small industry, the small business getting corporatised, they are not getting the support from banks. *(Time-bell)* They cannot go to the capital markets and, therefore, they are starved of funds. Madam, if the entire SME sector is allowed to be corporatised and the very reason for which it could not get corporatised even after the provisions in the Budget, is the reason of the Stamp Act and if that reason is removed, a large number of units, everywhere in India, which are languishing today and which want to come up and want to gain the support of the public through the stock exchanges and support of the banking institutions would get into the company form. And then the same NCLT mechanism will be available to them, in case they face a similar situation. With these words, madam, I commend this Bill to this House. I congratulate the Finance Minister for bringing this Bill sooner than later. Thank you, Madam.

SHRI JASWANT SINGH: Madam, I am very grateful to all the hon. Members for their valuable suggestions as this Bill is now in its final stages of consideration. It has had a very long passage of consideration starting in the Lok Sabha Standing Committee and now in Rajya Sabha. In so far as examination of the issues goes, I do believe that all issues have been examined very thoroughly at all the stages. Some broad points and issues, Madam, and then I will take some of the specific points raised by hon. Members. The Repeal Bill was considered by the Standing Committee. That I shared 'with the House earlier. And they too had observed on the aspect of transitional provisions in the proposed NCLT and, that is why, the amendments that were carried out and adopted by the Lok Sabha, are now a part of the Bill, on the registration of abated cases by NCLT and the removal of limitation as to time. Secondly, it is for saving the rehabilitation schemes already approved by the BIFR and AAFIR, to complete implementation, and the implementation shall be monitored by the NCLT as

approved by BIFR and AAFIR. And the third was waiver of fee in respect of abated cases when they are registered afresh with the NCLT. Now, here again, the net worth having been reduced from 100 per cent to 80 per cent, all the cases will get considered by the NCLT and it is only a question of their respective boards adopting a necessary resolution and thereafter there will be no additional formality or fees. Now, as the hon. Members would Tcnow, in the BIFR's lifetime, there were total about 4,700 references registered. Of these, 1,258 were dismissed as non-maintainable, 56 were dropped as the net worth of the unit became positive, and 1200 cases were recommended for winding up by the BIFR. Of the remaining, 347 have been revived, 257 are under revival, and that left 1509 pending cases, which stand abated on the repeal of SICA. These cases are eligible to be registered afresh with the NCLT, and they will not have to pay any additional fee. But their respective Boards, as of necessity, must adopt resolution. Now, the proposed NCLT set up will offer, I believe, a better alternative, as it consolidates the powers now being exercised by various separate bodies, like the BIFR, AAIFR, Company Law Board and High Courts. There are time limits prescribed for various stages, with a view to arrive at a decision within, I believe, about two years, at the most.

In the case of BIFR, as I have just shared with the House, the reference is made when 100 per cent net worth is eroded, whereas, in the case of NCLT, reference is mandatory when the net worth is eroded by 50 per cent. Also, as the hon. Members know, the NCLT mechanism provides the Rehabilitation Fund to make interim payments of dues of workmen, protection of the assets of the companies, revival and rehabilitation. Subsequently, I will be sharing details, with the hon. Members, of the Benches etc. Now, the following actions for the benefit of all Members have already been taken in regard to the NCLT. The Companies Second Amendment Act, 2002 provides for setting up of the NCLT and the National Company Law Appellate Tribunal. This is already being done. The Government have already notified the commencement of sections 2 and 6 of the Companies Second Amendment Act, 2002 to initiate steps for the setting up of NCLT and NCLAT. During first phase, that is, 2003-04, the Principal and Appellate Benches of the NCLT will be set up at New Delhi, and there will be other Regional Benches, which is not the case with the BIFR, & Mumbai, Kolkata, Chennai, NOIDA, Allahabad, Hyderabad, Ahmedabad, Bangalore, Indore and Jaipur, which will enable entrepreneurs and industrialists to reach them with greater ease. We have already

sanctioned 203 posts, including chairperson of NCLT, a president of NCLT, 29 members, 3 members of NCLAT and 170 other officers and staff. The selection process for appointment of members, including chairman and CLAT and president and CLT has already started under the chairmanship of the Chief Justice of India. So, it would be erroneous to think that steps are not being taken. Now, very briefly, Madam, I would like to refer to the hon. Members who have participated in the debate. The hon. Member, Shri Santosh Bagrodia, has made an extensive intervention in which a number of points were raised. I will be answering the amendments that he recommended very shortly. I have already answered the question of abatement etc. I am grateful to the hon. Member, Shri C. Ramachandraiah, for the support that he has offered, and I might share that the NCLT mechanism will address the problem of industrial sickness comprehensively, the figures having been shared. I am grateful to Dr. Singhvi for his support. He has stated that we should support the revival scheme. His submission that we should support the revival scheme, the schemes approved by the BIFR will, in any case, be saved. And under the NCLT, once a revival is agreed to by 75 per cent of the lenders, the scheme will, thereafter, be binding on all the others. And this Bill provides for saving all revival schemes already approved by the BIFR.

Hon. Shri Dipankar Mukherjee has raised substantial issues about the saving of capital, and the point of capital and labour is a point worthy of consideration and debate, but it would be erroneous to think that this Bill, in particular, concentrates only on one. I have shared about the expeditious survival, the time-table and the Rehabilitation Fund for supporting revival and for payment of workers' fees. And the NCLT does not have a protection similar to Section 22 of the SICA. Therefore, workers' dues will not be delayed; that is our conviction.

Hon. Shri Goenka, Rama Babu, said about the pending cases. I have said about the pending cases. He then suggested that if I were to permit merger or demerger of sick and healthy companies, it would help. That is a separate matter, not directly related with the Repeal Bill, and it can be raised by Rama Babu at the appropriate forum.

My hon. friend, hon. Shri Virumbi, has said that the proposal was to amend the SICA. He now wants to know why, to repeal the SICA, this change has been talked about. Repeal of the SICA and creation of the

NCLT has been considered in the light of the Eradi Committee's recommendations, which suggested that the whole question of sickness should be addressed comprehensively. Therefore, this issue has come up in the Session.

Hon. Shri Thakur spoke of the rights and interests of the workers. I have spoken about that already. And the role of banks and revival: that too has been considered by me.

On the three amendments, which hon. Shri Santosh Bagrodia has particularly suggested, may I cover them, Madam, because he spoke of them? He has suggested that "the provision of the Bill be brought into force through notification in the Official Gazette, and in a fractured kind of a way, on different dates. The Repeal Bill is a simple Repeal Bill to repeal SICA, and to abolish BIFR/AAIFR, all these sections of it are, therefore, consequential in nature; that is why, the task has to be accomplished with one notification, not fractured or differentiated notification."

The second amendment which he has suggested is that the pending cases before the BIFR should be allowed to be completed. Now, there are 1,569 cases. Many of these cases are pending for the last 10 to 15 years, and that is precisely why we have taken this measure. And it cannot be logically assumed that the cases which could not be disposed of in the last 10 to 15 years will now be expeditiously dealt with. It stretches the imagination of his, to carry conviction.

The third amendment which he has suggested is that the officers and the employees who have been holding regular employment should be absorbed in the NCLT. What are the existing provisions of the Act? Section 4, if you were to see, stipulates that "any officer/employee appointed on deputation shall stand reverted to the parent department." It further stipulates that any officer/employee who is employed on a regular basis shall become a Central Government employee." And the Bill does not prevent their adjustment/absorption wherever possible, under the Central Government, including the National Company Law Tribunal. The Bill also does not prevent Chairman/members of the BIFR/AAIFR being considered for appointment in the NCLT if they are found fit, and to hold positions in NCLT. But that selection process is being done by the Chief Justice. The Ministry does not have any executive authority in that regard.

I do believe, Madam, that I have answered most of the queries as comprehensively and adequately as I could. I now commend the Bill for consideration of the House.

THE DEPUTY CHAIRMAN: Now, I shall put the motion moved by Shri Jaswant Singh to vote. The question is:

> That the Bill to repeal the Sick Industrial Companies (Special Provisions) Act, 1985, as passed by the Lok Sabha be taken into consideration.

The motion was adopted.

THE DEPUTY CHAIRMAN: Now, we shall take up clause-by-clause consideration of the Bill.

Clause 2 *was added to the Bill.*

THE DEPUTY CHAIRMAN: Now, we shall take up clause 3 for consideration. There is one amendment by Shri Santosh Bagrodia.

SHRI SANTOSH BAGRODIA: Madam, I will just take one minute. The idea was that there should be more flexibility with the Government. If you make this amendment, it will be there. Otherwise, with no notification the entire BIFR will be repealed. I think, if you have more flexibility, probably, you can do more justice. But if you think it will be enough, I don't want to move it.

Clause 3 *was added to the Bill.*

Clause 4 - *Consequential provisions.*

THE DEPUTY CHAIRMAN: Now, we shall take up clause 4 for consideration. There is one amendment (No.3) by Shri Santosh Bagrodia. Do you want to move or withdraw?

SHRI SANTOSH BAGRODIA: Madam, I want to move this amendment. I beg to move:

That at page 3, after line 38, the following be inserted, namely: -

"(2) On the dissolution of the Board for Industrial and Financial Reconstruction and the Appellate Authority for Industrial and Financial Reconstruction, the Government shall make all efforts to absorb the officers and employees holding regular appointments in these organisations against suitable positions in the National Company Law Tribunal and its Appellate Tribunal which have been created under the Companies (Second Amendment) Act, 2002".

Madam, just for the information of the House I will mention what the Standing Committee has recommended on this. This is a very important amendment. What the hon. Minister has mentioned is for saving the rehabilitation schemes already approved by the BIFR and AAIFR to be monitored by the NCLT. That portion is all right. The next portion mentions about the waiver of fee in respect of abated cases when they get registered afresh with the NCLT. I seriously object to it.

The waiver of this fee is not an important factor at all. This is not a big relief. What I am suggesting is that all these cases should automatically go to the NCLT. Why do we need a registration part? The recommendation of the Standing Committee is also like this and I quote:

"The Committee have also expressed the view that abatement of all cases pending before BIFR/AAIFR on the date of notification of the coming into force of the repealing Act would cause great hardship to those companies whose cases are at an advanced stage of consideration and that a lot of time would be wasted, quite unnecessarily, in registering such cases afresh with the NCLT and considering them *de novo* under the new law. It is noteworthy in this context that the definition of sickness under section 3(1)(o) of SICA is far more stringent than that under section 2(f) of the newly enacted Companies (Second Amendment) Act, 2002."

उपसभापति : वह तो रिपोर्ट है न। The Report is already there.

SHRI SANTOSH BAGRODIA: I am just quoting the Report of the Standing Committee. मैं स्टैण्डिंग़ कमेटी की रिपोर्ट कोट कर रहा हूं। I am quoting only just one paragraph. I am not quoting the whole Report. I am only quoting only one paragraph relating to this subject.

श्री भारतेन्दु प्रकाश सिंहल (उत्तर प्रदेश) **:** डिबेट में क्या कर रहे थे ?

श्री संतोष बागड़ोदिया : डिबेट में आपको देख रहा था । मैं बोल ही नही सका, उनको देख रहा था बहुत अच्छा लग रहा था ।

> "Hence, fresh consideration of cases where companies have already been declared sick by the BIFR/AAIFR, by the NCLT once again, would not seem to serve any meaningful purpose and would only cause unnecessary delay in the process of rehabilitation."

Therefore, I would like to press my amendment. Let the Minister reply to it. *...(Interruptions)...*

THE DEPUTY CHAIRMAN: The question is:

That at page 3, after line 38, the following be inserted namely:-

> "(2) On the dissolution of the Board for Industrial and Financial Reconstruction and the Appellate Authority for Industrial and Financial Reconstruction, the Government shall make all efforts to absorb the officers and employees holding regular appointments in these organisations against suitable positions in the National Company Law Tribunal and its Appellate Tribunal which have been created under the Companies (Second Amendment) Act, 2002".

The amendment was negatived.

Clause 4 was added to the Bill.

Clauses 5 and 6 were added to the Bill.

THE DEPUTY CHAIRMAN: I shall now take up Clause 1 of the Bill. There is one amendment by Shri Santosh Bagrodia.

SHRI SANTOSH BAGRODIA: Madam, I have got good explanation from the Minister. I am not moving my amendment.

Clause 1 was added to the Bill.

The Enacting Formula and the Title were added to the Bill.

SHRI JASWANT SINGH: Madam, I move

That the Bill be passed.

The question was put and the motion was adopted.

STATUTORY RESOLUTION DISAPPROVING THE TAXATION LAWS (AMENDMENT) ORDINANCE, 2003 (NO.2 OF 2003).

&

THE TAXATION LAWS (AMENDMENT) BILL, 2003.

SHRI PRANAB MUKHERJEE (West Bengal): Madam, I move the following Resolution:-

> "That this House disapproves the Taxation Laws (Amendment) Ordinance, 2003 (No. 2 of 2003) promulgated by the President on the 8^{lh} September, 2003'.

I move it not because I disagree with the proposed amendments in the Bill. I am moving the Statutory Resolution, as I believe that taxation proposals should not be legislated through the Ordinance route. One of the most fundamental powers of the Parliament, especially of the House which is directly elected by the people is that, taxation is their exclusive jurisdiction. Even we, representing the States, do not have that power. Article 265, which provides that no tax should be levied, except by procedures of law, that right is denied the moment you want to impose, alter and vary taxation. Here in this Bill itself, you will find that the rates of taxation have been altered, of course, with the intention to give benefit to the assesses. But, nonetheless it has been altered. To adopt an Ordinance route to enact this piece of legislation, to my mind, is objectionable. Of course, there is a provision in the Constitution that when both the Houses of Parliament are not in Session and if the Executive finds it absolutely necessary, then they can resort to the Ordinance route, and can have legislations through the Ordinance route. What was the urgency? There must be urgency, an element of urgency in respect of the legislation. When the Bill was introduced in Lok Sabha, in the Statement of Objects and Reasons of the Bill, the hon. Minister very correctly mentioned that he received a series of representations. After he made certain amendments in the Finance Act, against those amendments various interest groups made representations to the Government and one such representation was made by one of the Departments under the Ministry of Finance, that is, the